

§ 536.81

through 536.81 and are hereby incorporated by reference:

- (1) § 536.28 (applicable law);
- (2) § 536.29 (determination of quantum);
- (3) § 536.31 (claims over \$100,000);
- (4) § 536.32 (settlement procedures);
- (5) § 536.33 (attorney fees).

§ 536.81 Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.10, except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

Subpart D—Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

§ 536.90 Statutory authority.

The statutory authority for §§ 536.90 through 536.97 is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the “Nonscope Claims Act.” For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.91 Scope.

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than \$1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

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(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, § 536.50, or §§ 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no “in scope” issue will §§ 536.90 through 536.97 be used.

§ 536.92 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of \$1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in §536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94 When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of

record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per §536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

Sec.

537.1 General.

537.2 Recovery of property unlawfully detained by civilians.

537.6 Maritime casualties; claims in favor of the United States.

537.7 Maritime claims.